IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 782 of 2005
In
SPECIAL CIVIL APPLICATION No. 3618 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
GN DESAI - Respondent(s)

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Appearance :
MR S.P.HASURKAR, AGP for Appellant(s) : 1,
MR IS SUPEHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. This Letters Patent Appeal is directed against the judgement and order dated 22nd March, 2004 passed by the learned Single Judge in Special Civil Application No.3618 of 1999 whereby the learned Single Judge has partly allowed the appeal by holding that the petitioner (respondent herein) would be governed by the scheme of 5th July, 1991 and that he will be entitled to receive benefit of grant of higher grade pay-scale on completion of 9, 18, and 27 years of service.

2. The respondent herein, the original petitioner, (hereinafter referred to as "the petitioner") had filed the abovementioned Special Civil Application seeking the following substantive reliefs:

> *"15. The petitioner, therefore, prays that this Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order or direction.*
>
> *(A) quashing and setting aside the letter dated 16.2.99 in so far as it concerns the petitioner.*
>
> (B) *Directing the Respondents to grant the higher grade scales of Rs.1640-2900, 2000-3500 and 2200-4000 to*

the petitioner on completion of 9,18, and 27 years service as per the Government Resolution dated 5.7.91 and to revise his pension accordingly and to pay the resultant amount with 12% interest."

3. The case of the petitioner as stated in the petition was that he was appointed as a storekeeper on 29th March, 1962 under the Superintending Engineer, Surat Irrigation Circle (appellant No.2 herein) and he voluntarily retired on 31st March, 1989 after putting in service of 27 years, without getting a single promotion throughout his career. That as per the Government Resolution dated 5th July, 1991, an employee would be entitled to higher grade scales on completion of 9, 18 and 27 years of service counting from the date of his appointment in case he has not got more than two promotions. That as the petitioner had not got any promotion, he became entitled to all three higher-grade scales on 28.3.1971, 28.3.1980 and 28.3.1989. It was also the case of the petitioner that he was entitled to first higher grade scale of Rs.1640-2900 instead of 1400-2600, however, it appears that the said relief was not pressed before the learned Single Judge.

4. As against that, the case of the appellants (original respondents) was that the petitioner

was appointed as a Junior Clerk on 21st December, 1956 and was promoted to the post of storekeeper vide order dated 25th January, 1962 and he took charge as storekeeper on 29th March, 1962. Accordingly, the petitioner had got the benefit of one promotion, hence, under the provisions of the Government Resolution dated 5th July, 1991 the petitioner was entitled to only two higher grade scales and not three higher grade scales as claimed by him. It was also the case of the appellants that the petitioner was not entitled to the benefit of the Government Resolution dated 7th July, 1991 but would be governed by the subsequent Government Resolution dated 14th August, 1994. However, the said contention is not urged in the present appeal.

5. It may be noted that the petitioner has not filed any rejoinder affidavit denying the averments made by the appellants in their affidavit-in-reply. Therefore, the fact that the petitioner had in fact availed of the benefit of one promotion in his career remains un-controverted.

6. Heard, learned Assistant Government Pleader, Shri S.P. Hasurkar for the appellants and learned Advocate, Shri S.I. Supehia for the respondent.

7. The learned Assistant Government Pleader assailed the judgement and order passed by the

learned Single Judge mainly on the ground that under clause (vi) of the Government Resolution dated 7th July, 1991 it is specifically provided that an employee who completes 27 years service in the relevant scale would be entitled to get the third higher grade scale provided that the concerned employee had not availed oF more than two promotions/higher grade scales during the said period. It was contended that the petitioner earlier had been appointed as a junior clerk on 3rd December, 1956 and had been promoted to the post of Storekeeper on 29th March, 1962, hence, under the aforesaid Government Resolution, the petitioner would be entitled to the benefit of only two higher grade scales and not three higher grade scales as held by the learned Single Judge. It was submitted that the fact regarding the petitioner having availed of the benefit of one promotion was stated in the affidavit-in-reply filed on behalf of the appellants; however, the said aspect had not been considered by the learned Single Judge. As such, the judgement and order insofar as the same holds that the respondent/petitioner is also entitled to the benefit of third higher grade scale deserves to be set aside as the same is not in consonance with the provisions of the scheme.

8. Learned Advocate, Shri Supehia supported the impugned judgement and order and submitted that the manner in which the scheme is being read by the appellants is a misreading of the scheme.

Referring to clause (vi) of the scheme which provides that an employee is entitled to the benefit of the third higher grade scale upon completion of 27 years of service in the relevant scale, provided that the employee has not received more than two promotions/higher grade scales earlier; it was submitted that the said clause envisages that for the purpose of entitlement to the third higher grade scale, the employee should not have received more than two promotions and more than two higher grade scales. It was submitted that accordingly, the petitioner had availed of the benefit of one promotion and two higher grade scales, hence, he would fall within the purview of the said clause as he had neither received more than two promotions nor more than two higher grade scales. It was submitted that as such, there is no infirmity in the decision of the learned Single Judge in holding that the petitioner is entitled to the benefit of three higher grade scales so as to warrant any interference by this Court.

9. Learned advocate, Shri Supehia has placed reliance upon a decision rendered by a Division Bench of this Court in the case of *Laxmiben Haribhai Ahir v. Collector, Surat and others,* Letters Patent Appeal No.1487 of 1998, on 9th March, 2000. However, the said decision would not be relevant insofar as the issue involved in the present appeal is concerned, as the same pertains to whether the provisions of

Government Resolution dated 5th July, 1991 or 16th August, 1994 would be applicable, which is no longer at issue in the present case.

10. The controversy in the present appeal is, therefore, confined to the question as to whether the petitioner is entitled to the benefit of three higher grade scales under the Government Resolution dated 5th July, 1991 as claimed by him or two higher grade scales as contended by the appellants.

11. In this context it would be necessary to advert to the relevant clauses of the Government Resolution dated 5th July, 1991 which read as under:

(ii) The first higher grade scale shall be granted on completion of 9 years service in the relevant scale provided that the employee has not received more than two promotions earlier. For the purpose of computation of 9 years service in the relevant scale, all service that counts for increment in that scale shall be taken into account;

(iv) The second higher grade scale shall be granted on completion of 18 years service in the relevant scale provided that the employee has not received more than two promotions/higher grade scales earlier. If an employee after getting higher grade

scale is promoted to his regular promotional post, then this will be considered as having received one higher grade scale/promotion only;

(vi) The third higher grade scale shall be granted on completion of 27 years service in the relevant scale provided that the employee has not received more than two promotions/higher grade scales earlier. If an employee after getting higher grade scale is promoted to his regular post, then this will be considered as having received one higher grade scale/promotion only;

(x) Each *employee who avails the benefit of the higher grade scales under this Scheme shall have to give an undertaking in writing as per annexure-I appended to this Government Resolution that he shall not refuse the regular promotion as and when it becomes due. This is because this scheme is intended to benefit those who are stagnating beyond a period of 9/18/27 years and it cannot be extended to those who have relinquished promotion for any reason. The undertaking may also state that if for any reason he declines the promotion when it becomes due, he shall forfeit the benefit under this Scheme and shall stand reverted in the original lower grade and shall draw pay which he would have drawn had he not been given the*

benefit of the higher grade scale under this Scheme. There will however, be no recovery on account of reversion of employee to his original lower grade for the period which he has drawn the pay and allowances in higher grade scale;

(xii) Fixation of pay of an employee on appointment to a higher grade scale under this Scheme shall be in accordance with the rule 41(a) of the B.C.S.Rs., i.e. as it is being done at the time of promotion.

(xiii) In the case of an employee who gets his regular promotion after getting higher grade scale he shall not get the benefit of pay fixation under rule 41(a) of B.C.S.Rs.

Upon reading the scheme as a whole, and the above-mentioned provisions in particular, it is apparent that the scheme puts higher grade scale more or less at par with promotion.

12. Clauses (ii), (iv) and (vi) of the scheme also make it amply clear that insofar as the entitlement to the first higher grade scale is concerned, what is envisaged under the scheme is that the employee should not have availed of the benefit of more than two promotions. Insofar as the second and third higher grade scales are concerned, the Scheme provides that to be entitled to the second or third higher

grade scale, the concerned employee should not have availed of the benefit of more than two promotions or higher grade scales. Thus, an employee who has availed of a maximum of two promotions, or one promotion and one higher grade scale or two higher grade scales is entitled to the second or third higher grade scale, as the case may be. Thus, any employee who has availed of more than two promotions would not be entitled to the benefit of the first, second or third higher grade scales. In case of an employee who has availed of the benefit of the first higher grade scale, while considering his entitlement to the second higher grade scale the first higher grade scale would have to be considered at par with a promotion, hence, if prior to getting the first higher grade scale, if the said employee had already got the benefit of two promotions, he would not be entitled to the second higher grade scale upon completion of 18 years of service in the relevant scale. Likewise, an employee, who has got the benefit of more than two promotions/higher grade scales, would not be entitled to the benefit of the third higher grade scale upon completion of 27 years service in the relevant scale.

13. The Scheme of Higher Grade Scale has been framed with a view to deal with the problem of absence or restricted chances of promotion and contemplates in all a maximum of three promotions in the service career of an employee

and accordingly provides for three higher grade scales upon completion of 9/18/27 years of service in the relevant scale. Thus, any employee who has already availed of the benefit of three or more promotions would not be entitled to any benefit under the scheme. To be entitled to any of the higher grade scales under the scheme, an employee should have availed of a maximum of two promotions prior thereto or one promotion and one higher grade scale or two higher grade scales as the case may be. Any benefit beyond three promotions/three higher grade scales is not contemplated under the scheme. The scheme equates higher grade scale with promotion, hence, the terms “promotion” and “higher grade scale” cannot be read disjunctively as is sought to be contended by the learned Advocate for the petitioner so as to read the scheme as providing the benefit of higher grade scale even to such employees who have availed of two promotions as well as two higher grade scales. Thus, to be entitled to the benefit of the third higher grade scale, in all, an employee should not have availed or more than two promotions or higher grade scales.

14. The entitlement of the petitioner to the benefit under the scheme has to be considered in the light of the aforesaid legal position. As can be seen from the facts of the case, the petitioner had availed of the benefit of one promotion from the post of Junior Clerk to

Storekeeper. Hence, there is no dispute that he would be entitled to two higher grade scales, namely the first and second higher grade scales upon completion of 9 and 18 years in the relevant scale. While considering the petitioner's entitlement to the third higher grade scale, what has to be seen is as to whether the petitioner has availed of the benefit of two or more promotions/higher grade scales. Thus, the promotion from the post of junior clerk to storekeeper would be a promotion to which the two higher grade scales availed by him would be required to be added, hence, the petitioner would have already availed of the benefit of more than two promotions/higher grade scales. Accordingly, he would not be entitled to the third higher grade scale.

15. Since the petitioner had suppressed the fact regarding his having availed of promotion from the post of junior clerk to the post of storekeeper and had made a positive assertion that he had not got a single promotion in his service career, it appears that the learned Single Judge had held that the petitioner was entitled to the benefit of all the three higher grade scales. The fact that the petitioner had already availed of the benefit of one promotion, though stated in the affidavit-in-reply, appears to have escaped the notice of the learned Single Judge. In the circumstances, the impugned judgement insofar as the same

holds that the respondent/petitioner is entitled to the third higher grade scale cannot be said to be in consonance with the provisions of the Scheme and is required to be set aside to that extent.

16. For the aforesaid stated reasons, the impugned judgement and order insofar as the same holds that the respondent/petitioner is also entitled to the third higher grade scale is quashed and set aside. The Appeal is, accordingly, allowed with no order as to costs.

[ANIL R. DAVE, J.]

[HARSHA DEVANI, J.]

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